IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 905 OF 2004
IN
INCOME TAX APPEAL (LDG.) NO. 264 OF 2004

The Commissioner of Income-tax. ... Appellant.

V/s.

Mr.Sanjay K. Sarawagi, Mumbai. ... Respondent.

A.D.Kango for the appellant.

J.I.Patel i/b. B.V.Jhaveri for the respondent.

CORAM : DR.S.RADHAKRISHNAN and V.C.DAGA, JJ.

DATED : 11th June 2007.

P.C. :

. Heard learned counsel for the appellant and learned counsel for the respondent. Perused notice of motion and affidavit filed in support thereof.

2. By this notice of motion, the appellant is seeking condonation of 150 days in filing appeal. The explanation for delay given by the appellant is thus:-

> The delay has occurred as a result of restructuring of the department. In order to streamline the work, the department has undergone major restructuring. The assessees are being identified as per the municipal limits. The case records are accordingly transferred from one charge to another and

> reassigned. It is on account of these reasons that limitation issue was lost sight off. Different officers have to acquaint themselves with new cases received by them under their charge and proceed from there. It is on account of these factors that the delay has occurred.

3. The above is a routine and stereotype reason furnished by the Revenue in almost all the applications for condonation of delay though restructuring of the department has actually taken place in the year 2001 whereas this appeal is filed in the year 2003. The affidavit in support is cryptic and does not give any particulars and reasons. The respondent immediately filed affidavit in reply pointing that merely on the ground of restructuring delay cannot be condoned. The appellant was, therefore, granted time to file better affidavit.

4. Despite the matter having been adjourned on several occasions, supplementary affidavit setting out sufficient cause for delay has not been filed. This attitude of the department is being noticed daily in number of cases with no improvement. This Court cannot show more indulgence than what was shown in this case and number of such other cases. Revenue cannot be given any special treatment. All litigants before this Court are to be treated similarly. In spite of this, we, in our opinion, have given much latitude which the appellant- Revenue failed to

encash.

5. In the above circumstances, we are left with no alternative but to dismiss the notice of motion for non-compliance of order and want of sufficient cause in filing the appeal belatedly.

6. In the result, notice of motion stands dismissed. In view of dismissal of notice of motion, appeal papers be consigned to record.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN, J.)**